

SECOND REGULAR SESSION

HOUSE BILL NO. 2003

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HARLAN, LADD BAKER AND HOSMER (Co-sponsors).

Read 1st time February 20, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4632L.011

AN ACT

To repeal sections 197.310, 197.314, 197.317, 197.318, 197.340, 198.006, 198.073, 198.080, 198.085, 198.086, and 660.317, RSMo, and to enact in lieu thereof fourteen new sections relating to long-term care.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 197.310, 197.314, 197.317, 197.318, 197.340, 198.006, 198.073, 198.080, 198.085, 198.086, and 660.317, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 197.310, 197.314, 197.317, 197.318, 197.340, 198.006, 198.073, 198.080, 198.085, 198.086, 198.094, 208.805, 660.302, and 660.317, to read as follows:

- 197.310. 1. The "Missouri Health Facilities Review Committee" is hereby established. [The agency shall provide clerical and administrative support to the committee. The committee may employ additional staff as it deems necessary.] **The department of health and senior services shall hire and administratively supervise any clerical and administrative support staff to the committee.**
2. The committee shall be composed of:
- (1) Two members of the senate appointed by the president pro tem, who shall be from different political parties; and
- (2) Two members of the house of representatives appointed by the speaker, who shall be from different political parties; and
- (3) Five members appointed by the governor with the advice and consent of the senate, not more than three of whom shall be from the same political party.

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 3. No business of this committee shall be performed without a majority of the full body.

14 4. The members shall be appointed as soon as possible after September 28, 1979. One
15 of the senate members, one of the house members and three of the members appointed by the
16 governor shall serve until January 1, 1981, and the remaining members shall serve until January
17 1, 1982. All subsequent members shall be appointed in the manner provided in subsection 2 of
18 this section and shall serve terms of two years. **The minority legislative members of the house**
19 **of representatives and senate shall be appointed by the minority floor leader of each**
20 **respective body.**

21 5. The committee shall elect a chairman at its first meeting which shall be called by the
22 governor. The committee shall meet upon the call of the chairman or the governor.

23 6. The committee shall review and approve or disapprove all applications for a certificate
24 of need made under sections 197.300 to 197.366. It shall issue reasonable rules and regulations
25 governing the submission, review and disposition of applications.

26 7. Members of the committee shall serve without compensation but shall be reimbursed
27 for necessary expenses incurred in the performance of their duties.

28 8. Notwithstanding the provisions of subsection 4 of section 610.025, RSMo, the
29 proceedings and records of the facilities review committee shall be subject to the provisions of
30 chapter 610, RSMo.

 197.314. 1. The provisions of sections 197.300 to 197.366 shall not apply to any
2 sixty-bed stand-alone facility designed and operated exclusively for the care of residents with
3 Alzheimer's disease or dementia and located in a tax increment financing district established
4 prior to 1990 within any county of the first classification with a charter form of government
5 containing a city with a population of over three hundred fifty thousand and which district also
6 has within its boundaries a skilled nursing facility.

7 2. The provisions of sections 197.300 to 197.366 shall not apply, as hereinafter stated,
8 to a skilled nursing facility that is owned or operated by a not-for-profit corporation [which was
9 created by a special act of the Missouri general assembly,] is exempt from federal income tax as
10 an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986[, is owned
11 by a religious organization] and is to be operated as part of a continuing care retirement
12 community offering independent living, residential care and skilled care. [This exemption shall
13 authorize no more than twenty additional skilled nursing beds at each of two facilities which do
14 not have any skilled nursing beds as of January 1, 1999.]

 197.317. 1. After July 1, 1983, no certificate of need shall be issued for the following:

2 (1) Additional residential care facility I, residential care facility II, intermediate care
3 facility or skilled nursing facility beds above the number then licensed by this state;

4 (2) Beds in a licensed hospital to be reallocated on a temporary or permanent basis to

5 nursing care or beds in a long-term care hospital meeting the requirements described in 42 CFR,
6 Section 412.23(e), excepting those which are not subject to a certificate of need pursuant to
7 paragraphs (e) and (g) of subdivision (10) of section 197.305; nor

8 (3) The reallocation of intermediate care facility or skilled nursing facility beds of
9 existing licensed beds by transfer or sale of licensed beds between a hospital licensed pursuant
10 to this chapter or a nursing care facility licensed pursuant to chapter 198, RSMo; except for beds
11 in counties in which there is no existing nursing care facility. No certificate of need shall be
12 issued for the reallocation of existing residential care facility I or II, or intermediate care facilities
13 operated exclusively for the mentally retarded to intermediate care or skilled nursing facilities
14 or beds. However, after January 1, [2003] **2005**, nothing in this section shall prohibit the
15 Missouri health facilities review committee from issuing a certificate of need for additional beds
16 in existing health care facilities or for new beds in new health care facilities or for the
17 reallocation of licensed beds, provided that no construction shall begin prior to [January 1, 2004]
18 **July 1, 2005**. The provisions of subsections 16 and 17 of section 197.315 shall apply to the
19 provisions of this section.

20 2. The health facilities review committee shall utilize demographic data from the office
21 of social and economic data analysis, or its successor organization, at the University of Missouri
22 as their source of information in considering applications for new institutional long-term care
23 facilities.

197.318. 1. The provisions of section 197.317 shall not apply to a residential care
2 facility I, residential care facility II, intermediate care facility or skilled nursing facility only
3 where the department of social services has first determined that there presently exists a need for
4 additional beds of that classification because the average occupancy of all licensed and available
5 residential care facility I, residential care facility II, intermediate care facility and skilled nursing
6 facility beds exceeds ninety percent for at least four consecutive calendar quarters, in a particular
7 county, and within a fifteen-mile radius of the proposed facility, and the facility otherwise
8 appears to qualify for a certificate of need. The department's certification that there is no need
9 for additional beds shall serve as the final determination and decision of the committee. In
10 determining ninety percent occupancy, residential care facility I and II shall be one separate
11 classification and intermediate care and skilled nursing facilities are another separate
12 classification.

13 2. The Missouri health facilities review committee may, for any facility certified to it by
14 the department, consider the predominant ethnic or religious composition of the residents to be
15 served by that facility in considering whether to grant a certificate of need.

16 3. There shall be no expenditure minimum for facilities, beds, or services referred to in
17 subdivisions (1), (2) and (3) of section 197.317. The provisions of this subsection shall expire

18 January 1, [2003] **2005**.

19 4. As used in this section, the term "licensed and available" means beds which are
20 actually in place and for which a license has been issued.

21 5. The provisions of section 197.317 shall not apply to any facility where at least
22 ninety-five percent of the patients require diets meeting the dietary standards defined by section
23 196.165, RSMo.

24 6. The committee shall review all letters of intent and applications for long-term care
25 hospital beds meeting the requirements described in 42 CFR, Section 412.23(e) under its criteria
26 and standards for long-term care beds.

27 7. Sections 197.300 to 197.366 shall not be construed to apply to litigation pending in
28 state court on or before April 1, 1996, in which the Missouri health facilities review committee
29 is a defendant in an action concerning the application of sections 197.300 to 197.366 to
30 long-term care hospital beds meeting the requirements described in 42 CFR, Section 412.23(e).

31 8. Notwithstanding any other provision of this chapter to the contrary:

32 (1) A facility licensed pursuant to chapter 198, RSMo, may increase its licensed bed
33 capacity by:

34 (a) Submitting a letter of intent to expand to the [division of aging] **department of**
35 **health and senior services** and the health facilities review committee;

36 (b) Certification from the [division of aging] **department of health and senior services**
37 that the facility:

38 a. Has no patient care class I deficiencies within the last eighteen months; and

39 b. Has maintained a ninety-percent average occupancy rate for the previous six quarters;

40 (c) Has made an effort to purchase beds for eighteen months following the date the letter
41 of intent to expand is submitted pursuant to paragraph (a) of this subdivision. For purposes of
42 this paragraph, an "effort to purchase" means a copy certified by the offeror as an offer to
43 purchase beds from another licensed facility in the same licensure category; and

44 (d) If an agreement is reached by the selling and purchasing entities, the health facilities
45 review committee shall issue a certificate of need for the expansion of the purchaser facility upon
46 surrender of the seller's license; or

47 (e) If no agreement is reached by the selling and purchasing entities, the health facilities
48 review committee shall permit an expansion for:

49 a. A facility with more than forty beds may expand its licensed bed capacity within the
50 same licensure category by twenty-five percent or thirty beds, whichever is greater, if that same
51 licensure category in such facility has experienced an average occupancy of ninety-three percent
52 or greater over the previous six quarters;

53 b. A facility with fewer than forty beds may expand its licensed bed capacity within the

54 same licensure category by twenty-five percent or ten beds, whichever is greater, if that same
55 licensure category in such facility has experienced an average occupancy of ninety-two percent
56 or greater over the previous six quarters;

57 c. A facility adding beds pursuant to subparagraphs a. or b. of this paragraph shall not
58 expand by more than fifty percent of its then licensed bed capacity in the qualifying licensure
59 category;

60 (2) Any beds sold shall, for five years from the date of relicensure by the purchaser,
61 remain unlicensed and unused for any long-term care service in the selling facility, whether they
62 do or do not require a license;

63 (3) The beds purchased shall, for two years from the date of purchase, remain in the bed
64 inventory attributed to the selling facility and be considered by the department of social services
65 as licensed and available for purposes of this section;

66 (4) Any residential care facility licensed pursuant to chapter 198, RSMo, may relocate
67 any portion of such facility's current licensed beds to any other facility to be licensed within the
68 same licensure category if both facilities are under the same licensure ownership or control, and
69 are located within six miles of each other;

70 (5) A facility licensed pursuant to chapter 198, RSMo, may transfer or sell individual
71 long-term care licensed beds to facilities qualifying pursuant to paragraphs (a) and (b) of
72 subdivision (1) of this subsection. Any facility which transfers or sells licensed beds shall not
73 expand its licensed bed capacity in that licensure category for a period of five years from the date
74 the licensure is relinquished.

75 9. Any existing licensed and operating health care facility offering long-term care
76 services may replace one-half of its licensed beds at the same site or a site not more than thirty
77 miles from its current location if, for at least the most recent four consecutive calendar quarters,
78 the facility operates only fifty percent of its then licensed capacity with every resident residing
79 in a private room. In such case:

80 (1) The facility shall report to the [division of aging] **department of health and senior**
81 **services** vacant beds as unavailable for occupancy for at least the most recent four consecutive
82 calendar quarters;

83 (2) The replacement beds shall be built to private room specifications and only used for
84 single occupancy; and

85 (3) The existing facility and proposed facility shall have the same owner or owners,
86 regardless of corporate or business structure, and such owner or owners shall stipulate in writing
87 that the existing facility beds to be replaced will not later be used to provide long-term care
88 services. If the facility is being operated under a lease, both the lessee and the owner of the
89 existing facility shall stipulate the same in writing.

90 10. Nothing in this section shall prohibit a health care facility licensed pursuant to
91 chapter 198, RSMo, from being replaced in its entirety within fifteen miles of its existing site so
92 long as the existing facility and proposed or replacement facility have the same owner or owners
93 regardless of corporate or business structure and the health care facility being replaced remains
94 unlicensed and unused for any long-term care services whether they do or do not require a license
95 from the date of licensure of the replacement facility.

 197.340. 1. Any health facility providing a health service must notify the committee of
2 any discontinuance of any previously provided health care service, a decrease in the number of
3 licensed beds by ten percent or more, or the change in licensure category for any such facility.

4 **2. Any health facility providing a health service shall notify the committee annually**
5 **of the number of licensed beds that are unavailable. Beginning January 1, 2003, the**
6 **committee shall collect for deposit in the general revenue fund an annual surcharge of one**
7 **thousand dollars for each licensed but unavailable bed for health facilities licensed**
8 **pursuant to chapter 198, RSMo.**

 198.006. As used in sections 198.003 to 198.186, unless the context clearly indicates
2 otherwise, the following terms mean:

- 3 (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm;
- 4 (2) "Administrator", the person who is in general administrative charge of a facility;
- 5 (3) "Affiliate":
 - 6 (a) With respect to a partnership, each partner thereof;
 - 7 (b) With respect to a limited partnership, the general partner and each limited partner
 - 8 with an interest of five percent or more in the limited partnership;
 - 9 (c) With respect to a corporation, each person who owns, holds or has the power to vote,
 - 10 five percent or more of any class of securities issued by the corporation, and each officer and
 - 11 director;
 - 12 (d) With respect to a natural person, any parent, child, sibling, or spouse of that person;
- 13 (4) "Department", the Missouri department of [social] **health and senior** services;
- 14 (5) **"Dementia", a deterioration of intellectual function and other cognitive skills**
15 **leading to a decline in the ability to perform activities of daily living;**
- 16 (6) **"Direct care", the provision of nursing care or assistance with feeding, dressing,**
17 **movement, bathing, or other personal needs;**
- 18 (7) "Emergency", a situation, physical condition or one or more practices, methods or
19 operations which presents imminent danger of death or serious physical or mental harm to
20 residents of a facility;
- 21 [(6)] (8) "Facility", any residential care facility I, residential care facility II, immediate
22 care facility, or skilled nursing facility;

23 [(7)] (9) "Health care provider", any person providing health care services or goods to
24 residents and who receives funds in payment for such goods or services under Medicaid;

25 [(8)] (10) "Intermediate care facility", any premises, other than a residential care facility
26 I, residential care facility II, or skilled nursing facility, which is utilized by its owner, operator,
27 or manager to provide twenty-four hour accommodation, board, personal care, and basic health
28 and nursing care services under the daily supervision of a licensed nurse and under the direction
29 of a licensed physician to three or more residents dependent for care and supervision and who
30 are not related within the fourth degree of consanguinity or affinity to the owner, operator or
31 manager of the facility;

32 [(9)] (11) "Manager", any person other than the administrator of a facility who contracts
33 or otherwise agrees with an owner or operator to supervise the general operation of a facility,
34 providing such services as hiring and training personnel, purchasing supplies, keeping financial
35 records, and making reports;

36 [(10)] (12) "Medicaid", medical assistance under section 208.151, RSMo, et seq., in
37 compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42
38 U.S.C. 301 et seq.), as amended;

39 [(11)] (13) "Neglect", the failure to provide, by those responsible for the care, custody,
40 and control of a resident in a facility, the services which are reasonable and necessary to maintain
41 the physical and mental health of the resident, when such failure presents either an imminent
42 danger to the health, safety or welfare of the resident or a substantial probability that death or
43 serious physical harm would result;

44 [(12)] (14) "Operator", any person licensed or required to be licensed under the
45 provisions of sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

46 [(13)] (15) "Owner", any person who owns an interest of five percent or more in:

47 (a) The land on which any facility is located;

48 (b) The structure or structures in which any facility is located;

49 (c) Any mortgage, contract for deed, or other obligation secured in whole or in part by
50 the land or structure in or on which a facility is located; or

51 (d) Any lease or sublease of the land or structure in or on which a facility is located.

52

53 "Owner" does not include a holder of a debenture or bond purchased at public issue nor does it
54 include any regulated lender unless the entity or person directly or through a subsidiary operates
55 a facility;

56 [(14)] (16) "Resident", a person who by reason of aging, illness, disease, or physical or
57 mental infirmity receives or requires care and services furnished by a facility and who resides
58 or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period

59 exceeding twenty-four consecutive hours;

60 [(15)] (17) "Residential care facility I", any premises, other than a residential care facility
61 II, intermediate care facility, or skilled nursing facility, which is utilized by its owner, operator
62 or manager to provide twenty-four hour care to three or more residents, who are not related
63 within the fourth degree of consanguinity or affinity to the owner, operator, or manager of the
64 facility and who need or are provided with shelter, board, and with protective oversight, which
65 may include storage and distribution or administration of medications and care during short-term
66 illness or recuperation;

67 [(16)] (18) "Residential care facility II", any premises, other than a residential care
68 facility I, an intermediate care facility, or a skilled nursing facility, which is utilized by its owner,
69 operator or manager to provide twenty-four hour accommodation, board, and care to three or
70 more residents who are not related within the fourth degree of consanguinity or affinity to the
71 owner, operator, or manager of the facility, and who need or are provided with supervision of
72 diets, assistance in personal care, storage and distribution or administration of medications,
73 supervision of health care under the direction of a licensed physician, and protective oversight,
74 including care during short-term illness or recuperation;

75 [(17)] (19) "Skilled nursing facility", any premises, other than a residential care facility
76 I, a residential care facility II, or an intermediate care facility, which is utilized by its owner,
77 operator or manager to provide for twenty-four hour accommodation, board and skilled nursing
78 care and treatment services to at least three residents who are not related within the fourth degree
79 of consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing
80 care and treatment services are those services commonly performed by or under the supervision
81 of a registered professional nurse for individuals requiring twenty-four hours a day care by
82 licensed nursing personnel including acts of observation, care and counsel of the aged, ill, injured
83 or infirm, the administration of medications and treatments as prescribed by a licensed physician
84 or dentist, and other nursing functions requiring substantial specialized judgment and skill;

85 [(18)] (20) "Vendor", any person selling goods or services to a health care provider.

198.073. 1. [Except as provided in subsection 3 of this section, a residential care facility
2 II or residential care facility I shall admit or retain only those persons who are capable mentally
3 and physically of negotiating a normal path to safety using assistive devices or aids when
4 necessary, and who may need assisted personal care within the limitations of such facilities, and
5 who do not require hospitalization or skilled nursing care.] **An individual may be accepted for
6 residency in a residential care facility I or residential care facility II or remain in residence
7 if the facility:**

8 (1) **Provides for or secures appropriate services to meet the scheduled and**
9 **unscheduled needs of the resident; and**

10 (2) **Has staff appropriate in numbers and with appropriate skills to provide such**
11 **services; and**

12 (3) **Has a written plan, approved by the local fire department, for the protection**
13 **of all residents in the event of disasters. Such plan may include keeping residents in place,**
14 **evacuating residents to areas of refuge, evacuating residents from the building when**
15 **necessary, or other methods of protection based on the emergency and the individual**
16 **building design; and**

17 (4) **Has written verification signed by the resident, or a family member or legal**
18 **representative of the resident, the resident's physician and the facility representative**
19 **stating how the facility will meet the scheduled and unscheduled needs of the resident; and**

20 (5) **Is staffed twenty-four hours a day by the appropriate number and type of**
21 **personnel for the proper care of residents and upkeep of the facility.**

22 2. Notwithstanding the provisions of subsection 3 of this section, those persons
23 previously qualified for residence who may have a temporary period of incapacity due to illness,
24 surgery, or injury, which period does not exceed forty-five days, may be allowed to remain in a
25 residential care facility II or residential care facility I if approved by a physician.

26 3. A residential care facility II may admit or continue to care for [those persons who are
27 physically capable of negotiating a normal path to safety using assistive devices or aids when
28 necessary but are mentally incapable of negotiating such a path to safety that have been
29 diagnosed with Alzheimer's disease or Alzheimer's related dementia] **individuals with dementia**
30 **who require assistance in order to evacuate in the event of a disaster**, if the following
31 requirements are met:

32 (1) [A family member or legal representative of the resident, in consultation with the
33 resident's primary physician and the facility, determines that the facility can meet the needs of
34 the resident. The facility shall document the decision regarding continued placement in the
35 facility through written verification by the family member, physician and the facility
36 representative;

37 (2)] The facility is equipped with an automatic sprinkler system, in compliance with
38 National Fire Protection Association Code 13 or National Fire Protection Association Code 13R,
39 and an automated fire door system and smoke alarms in compliance with 13-3.4 of the 1997 Life
40 Safety Codes for Existing Health Care Occupancy;

41 [(3) In a multilevel facility, residents who are mentally incapable of negotiating a
42 pathway to safety are housed only on the ground floor;

43 (4)] (2) The facility shall take necessary measures to provide residents with the
44 opportunity to explore the facility and, if appropriate, its grounds;

45 [(5) The facility shall be staffed twenty-four hours a day by the appropriate number and

46 type of personnel necessary for the proper care of residents and upkeep of the facility. In meeting
47 such] **(3) In meeting** staffing requirements, every resident [who is mentally incapable of
48 negotiating a pathway to safety] **with dementia who requires assistance in order to evacuate**
49 **in the event of a disaster** shall count as three residents. All on-duty staff of the facility shall,
50 at all times, be awake, dressed and prepared to assist residents in case of emergency;

51 [(6)] **(4)** Every resident [mentally incapable of negotiating a pathway to safety in the
52 facility] **with dementia who requires assistance in order to evacuate in the event of disaster**
53 shall be assessed by a licensed professional, as defined in sections 334.010 to 334.265, RSMo,
54 chapter 335, RSMo, or chapter 337, RSMo, with an assessment [instrument utilized by the
55 division of aging known as the minimum data set used for assessing residents of skilled nursing
56 facilities] **tool for community-based services for persons with dementia determined by the**
57 **department:**

58 (a) Upon admission;

59 (b) At least semiannually; and

60 (c) When a significant change has occurred in the resident's condition which may require
61 additional services;

62 [(7)] **(5)** Based on the assessment in subdivision [(6)] **(4)** of this subsection, a licensed
63 professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter
64 337, RSMo, shall develop an individualized service plan for every resident [who is mentally
65 incapable of negotiating a pathway to safety] **with dementia who requires assistance in order**
66 **to evacuate in the event of disaster**. Such individualized service plan shall be implemented by
67 the facility's staff to meet the specific needs of the resident;

68 [(8)] **(6)** Every facility shall use a personal electronic monitoring device for any resident
69 whose physician recommends the use of such device;

70 [(9)] All facility personnel who will provide direct care to residents who are mentally
71 incapable of negotiating a pathway to safety shall receive at least twenty-four hours of training
72 within the first thirty days of employment. At least twelve hours of such training shall be
73 classroom instruction, with six classroom instruction hours and two on-the-job training hours
74 related to the special needs, care and safety of residents with dementia;

75 (10) All personnel of the facility, regardless of whether such personnel provides direct
76 care to residents who cannot negotiate a pathway to safety, shall receive on a quarterly basis at
77 least four hours of in- service training, with at least two such hours relating to the care and safety
78 of residents who are mentally incapable of negotiating a pathway to safety;

79 [(11)] **(7) The facility shall comply with the training requirements pursuant to**
80 **subdivisions (1) and (2) of subsection 8 of section 660.050, RSMo;**

81 **(8)** Every facility shall make available and implement self-care, productive and leisure

82 activity programs for persons with dementia which maximize and encourage the resident's
83 optimal functional ability;

84 [(12)] (9) Every facility shall develop and implement a plan to protect the rights, privacy
85 and safety of all residents and to prevent the financial exploitation of all residents.[]; and

86 (13) A licensee of any licensed residential care facility or any residential care facility
87 shall ensure that its facility does not accept or retain a resident who is mentally incapable of
88 negotiating a normal pathway to safety using assistive devices and aids that:

89 (a) Has exhibited behaviors which indicate such resident is a danger to self or others;

90 (b) Is at constant risk of elopement;

91 (c) Requires physical restraint;

92 (d) Requires chemical restraint. As used in this subdivision, the following terms mean:

93 a. "Chemical restraint", a psychopharmacologic drug that is used for discipline or
94 convenience and not required to treat medical symptoms;

95 b. "Convenience", any action taken by the facility to control resident behavior or
96 maintain residents with a lesser amount of effort by the facility and not in the resident's best
97 interests;

98 c. "Discipline", any action taken by the facility for the purpose of punishing or penalizing
99 residents;

100 (e) Requires skilled nursing services as defined in subdivision (17) of section 198.003
101 for which the facility is not licensed or able to provide;

102 (f) Requires more than one person to simultaneously physically assist the resident with
103 any activity of daily living, with the exception of bathing;

104 (g) Is bed-bound or chair-bound due to a debilitating or chronic condition.

105 4. The facility shall not care for any person unless such facility is able to provide
106 appropriate services for and meet the needs of such person.

107 5.] 4. Nothing in this chapter shall prevent a facility from discharging a resident who is
108 a danger to himself or herself, or to others.

109 [6. The training requirements established in subdivisions (9) and (10) of subsection 3 of
110 this section shall fully satisfy the training requirements for the program described in subdivision
111 (18) of subsection 1 of section 208.152, RSMo.

112 7. The division of aging] 5. **The department** shall promulgate rules to ensure
113 compliance with this section and to sanction facilities that fail to comply with this section. Any
114 rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under
115 the authority delegated in this section shall become effective only if it complies with and is
116 subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo.
117 This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the

118 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to
119 disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking
120 authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

198.080. [The division of aging shall develop flexible assessment procedures for
2 individuals in long-term care and those considering long- term care services which follow the
3 individual through the continuum of care, including periodic reassessment. By January 1, 2002,
4 the division of aging shall promulgate rules and regulations to implement the new assessment
5 system and shall make a report to the appropriate house and senate committees of the general
6 assembly regarding the new assessment system. Any rule or portion of a rule, as that term is
7 defined in section 536.010, RSMo, that is created under the authority delegated in this section
8 shall become effective only if it complies with and is subject to all of the provisions of chapter
9 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo,
10 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter
11 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are
12 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed
13 or adopted after August 28, 1999, shall be invalid and void.] **The departments of health and
14 senior services, social services, mental health, and elementary and secondary education
15 shall work together to compare and evaluate their assessment procedures for individuals
16 receiving long-term care services and those individuals considering long-term care services.
17 Assessment procedures that are used for eligibility, care needs determination, placement,
18 and funding of units of care shall be compared and evaluated. Following such evaluation,
19 the departments shall work together to make changes in the assessment procedures utilized
20 by each department to provide uniformity and equity of services so the care needs of
21 individuals are met regardless of the program or department providing services and
22 funding. The assessment of individuals with long-term care needs shall include, but is not
23 limited to, the following:**

24 (1) **A comprehensive assessment of the individual's care needs and whether such**
25 **needs are met or unmet; and**

26 (2) **An assessment of the individual's cognitive ability to perform activities of daily**
27 **living; and**

28 (3) **An evaluation of the individual's support system in the community that could**
29 **enable the individual to live in a community setting instead of an institution if the**
30 **individual desires to be in a community setting; and**

31 (4) **Periodic reassessments of the individual's health, care needs, and support**
32 **system.**

33 **2. The departments of health and senior services, social services, mental health, and**

34 **elementary and secondary education shall work together and with volunteers trained**
35 **pursuant to section 208.819, RSMo, to evaluate individuals in long-term care institutions**
36 **receiving public assistance and determine such individual's desire and ability to move out**
37 **of the institution and into a community setting.**

198.085. In establishing standards for each type of facility, the department shall classify
2 the standards into three categories for each type of licensed facility as follows:

3 (1) Class I standards are standards the violation of which would present either an
4 imminent danger to the health, safety or welfare of any resident or a substantial probability that
5 death or serious physical harm would result. **Class I standards shall be divided into the**
6 **following violation categories:**

7 (a) **Class I death violations which are violations of class I standards that have**
8 **resulted in the death of a resident;**

9 (b) **Class I harm violations which are violations of class I standards that have**
10 **resulted in serious physical harm to a resident; and**

11 (c) **Class I risk violations which are violations of class I standards that present an**
12 **imminent danger to the health, safety, or welfare of a resident or a substantial probability**
13 **that death or serious physical harm would result;**

14 (2) Class II standards are standards which have a direct or immediate relationship to the
15 health, safety or welfare of any resident, but which do not create imminent danger;

16 (3) Class III standards are standards which have an indirect or a potential impact on the
17 health, safety or welfare of any resident.

198.086. 1. The [division of aging] **department of health and senior services** shall
2 develop and implement a demonstration project designed to establish a licensure category for
3 health care facilities that wish to provide treatment to persons with Alzheimer's disease or
4 Alzheimer's related dementia. The division shall also:

5 (1) Inform potential providers of the demonstration project and seek letters of intent;

6 (2) Review letters of intent and select provider organizations to participate in the
7 demonstration project. Ten such organizations may develop such projects using an existing
8 license and additional organizations shall be newly licensed facilities with no more than thirty
9 beds per project. One demonstration project shall be at a stand-alone facility of no more than
10 one hundred twenty beds designed and operated exclusively for the care of residents with
11 Alzheimer's disease or dementia within a county of the first classification with a charter form of
12 government with a population over nine hundred thousand. A total of not more than three
13 hundred beds may be newly licensed through the demonstration projects. All projects shall
14 maintain their pilot status until a complete evaluation is completed by the [division of aging]
15 **department**, in conjunction with a qualified Missouri school or university, and a written

16 determination is made from such evaluation that the pilot project is successful;

17 (3) Monitor the participants' compliance with the criteria established in this section;

18 (4) Recommend legislation regarding the licensure of dementia- specific residential care
19 based on the results of the demonstration project; and

20 (5) Submit a report regarding the [division's] **department's** activities and
21 recommendations for administrative or legislative action on or before November fifteenth of each
22 year to the governor, the president pro tem of the senate and the speaker of the house of
23 representatives.

24 2. The director of the [division of aging] **department of health and senior services**
25 shall:

26 (1) Develop a reimbursement methodology to reasonably and adequately compensate the
27 pilot projects for the costs of operation of the project, and require the filing of annual cost reports
28 by each participating facility which shall include, but not be limited to, the cost equivalent of
29 unpaid volunteer or donated labor;

30 (2) Process the license applications of project participants;

31 (3) Monitor each participant to assure its compliance with the requirements and that the
32 life, health and safety of residents are assured;

33 (4) Require each participating facility to complete a minimum data set form for each
34 resident occupying a pilot bed;

35 (5) Require the [division of aging] **department** to assign a single team of the same
36 surveyors to inspect and survey all participating facilities at least twice a year for the entire
37 period of the project; and

38 (6) Submit to the president pro tem of the senate and speaker of the house of
39 representatives copies of any statements of deficiencies, plans of correction and complaint
40 investigation reports applying to project participants.

41 3. Project participants shall:

42 (1) Be licensed by the [division of aging] **department of health and senior services**;

43 (2) Provide care only to persons who have been diagnosed with Alzheimer's disease or
44 Alzheimer's related dementia;

45 (3) Have buildings and furnishings that are designed to provide for the resident's safety.
46 Facilities shall have indoor and outdoor activity areas, and electronically controlled exits from
47 the buildings and grounds to allow residents the ability to explore while preventing them from
48 exiting the facility's grounds unattended;

49 (4) Be staffed twenty-four hours a day by the appropriate number and type of personnel
50 necessary for the proper care of residents and upkeep of the facility;

51 (5) Conduct special staff training relating to the needs, care and safety of persons with

52 Alzheimer's disease or Alzheimer's related dementia within the first thirty days of employment;
53 (6) Utilize personal electronic monitoring devices for any resident whose physician
54 recommends use of such device;

55 (7) Permit the resident's physician, in consultation with the family members or health
56 care advocates of the resident, to determine whether the facility meets the needs of the resident;

57 (8) Be equipped with an automatic sprinkler system, in compliance with the National
58 Fire Protection Association Code 13 or National Fire Protection Association Code 13R, and an
59 automated fire alarm system and smoke barriers in compliance with the 1997 Life Safety Codes
60 for Existing Health Care Occupancy; and

61 (9) Implement a social model for the residential environment rather than an institutional
62 medical model.

63 4. For purposes of this section, "health care facilities for persons with Alzheimer's
64 disease or Alzheimer's related dementia" means facilities that are specifically designed and
65 operated to provide elderly individuals who have chronic confusion or dementia illness, or both,
66 with a safe, structured but flexible environment that encourages physical activity through a
67 well-developed recreational and aging-in-place, and activity program. Such program shall
68 continually strive to promote the highest practicable physical and mental abilities and functioning
69 of each resident.

70 **5. Notwithstanding any other provision of law to the contrary, beginning July 1,**
71 **2003, the department of health and senior services shall license a new category of facility**
72 **to be known as a "Health Care Facility for Persons with Alzheimer's Disease or**
73 **Alzheimer's Related Dementia" and the provisions of sections 197.300 to 197.366, RSMo,**
74 **shall not apply to facilities licensed pursuant to this subsection.**

198.094. All facilities licensed pursuant to this chapter that receive Medicaid
2 **funding for residents pursuant to chapter 208, RSMo, shall submit an annual financial**
3 **statement by October fifteenth of each year on a form developed by the department of**
4 **health and senior services. The completed forms shall be compiled by the department and**
5 **submitted as a detailed report to the members of the general assembly and the governor**
6 **no later than January fifteenth of each year. The form shall include but is not limited to**
7 **a request for the following information:**

8 (1) The range in salary of employees by job title, including administrator for the
9 previous fiscal year;

10 (2) Dividends paid to any shareholder, itemized by shareholder;

11 (3) Any other remuneration paid to other persons in the form of distribution of
12 profit or consulting fees;

13 (4) Payments to any entity as operator fees;

14 **(5) Ownership by any shareholder, partner, or employee in any entity which does**
15 **business with any facility licensed pursuant to this chapter. Such form shall include the**
16 **date in which such ownership was acquired and the percentage of ownership; and**

17 **(6) If a facility is owned by a publicly traded entity, a copy of its Form 8-K filed**
18 **with the United States Securities and Exchange Commission.**

208.805. In determining Medicaid eligibility for and providing Medicaid benefits
2 **to persons eligible for services through a home and community-based waiver pursuant to**
3 **Section 1915C of the federal Social Security Act, the department of social services shall,**
4 **subject to appropriations, use the same age restrictions, division of assets, and income**
5 **allowances that are used in determining Medicaid eligibility for and providing Medicaid**
6 **benefits to persons requiring institutional care. The department shall apply to the federal**
7 **Department of Health and Human Services for a Medicaid waiver amendment to the home**
8 **and community-based waiver if such amendment is necessary to implement the provisions**
9 **of this section.**

660.302. The department of health and senior services shall investigate incidents
2 **and reports of elder abuse using the procedures established in sections 660.250 to 660.295**
3 **and notwithstanding any other provision of the law to the contrary, shall promptly refer**
4 **all suspected cases of elder abuse to the appropriate law enforcement agency and**
5 **prosecutor and determine whether protective services are required pursuant to sections**
6 **660.250 to 660.295.**

 660.317. 1. For the purposes of this section, the term "provider" means any person,
2 corporation or association who:

3 (1) Is licensed as an operator pursuant to chapter 198, RSMo;

4 (2) Provides in-home services under contract with the department;

5 (3) Employs nurses or nursing assistants for temporary or intermittent placement in
6 health care facilities; [or]

7 **(4) Employs persons who provide personal care assistance services. For purposes**
8 **of this subdivision, "provider" does not include the individual receiving personal care**
9 **assistance or any member of such individual's immediate family;**

10 **(5) Is an entity licensed pursuant to chapter 197, RSMo; or**

11 **[(5)] (6) Is a public or private facility, day program, residential facility or specialized**
12 **service operated, funded or licensed by the department of mental health.**

13 2. For the purpose of this section "patient or resident" has the same meaning as such term
14 is defined in section 43.540, RSMo.

15 3. Beginning August 28, 1997, not later than two working days of hiring any person for
16 a full-time, part-time or temporary position to have contact with any patient or resident the

17 provider shall, or in the case of temporary employees hired through an employment agency, the
18 employment agency shall prior to sending a temporary employee to a provider:

19 (1) Request a criminal background check as provided in section 43.540, RSMo.
20 Completion of an inquiry to the highway patrol for criminal records that are available for
21 disclosure to a provider for the purpose of conducting an employee criminal records background
22 check shall be deemed to fulfill the provider's duty to conduct employee criminal background
23 checks pursuant to this section; except that, completing the inquiries pursuant to this subsection
24 shall not be construed to exempt a provider from further inquiry pursuant to common law
25 requirements governing due diligence; and

26 (2) Make an inquiry to the department of social services, whether the person is listed on
27 the employee disqualification list as provided in section 660.315.

28 4. When the provider requests a criminal background check pursuant to section 43.530,
29 RSMo, the requesting entity may require that the applicant reimburse the provider for the cost
30 of such record check.

31 5. An applicant for a position to have contact with patients or residents of a provider
32 shall:

33 (1) Sign a consent form as required by section 43.540, RSMo, so the provider may
34 request a criminal records review;

35 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
36 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge
37 and shall include any suspended imposition of sentence, any suspended execution of sentence
38 or any period of probation or parole; and

39 (3) Disclose if the applicant is listed on the employee disqualification list as provided
40 in section 660.315.

41 6. An applicant who knowingly fails to disclose his criminal history as required in
42 subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class
43 A misdemeanor if the provider knowingly hires a person to have contact with patients or
44 residents and the person has been convicted of, pled guilty to or nolo contendere in this state or
45 any other state or has been found guilty of a crime, which if committed in Missouri would be a
46 class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection
47 3 of section 198.070, RSMo, or section 568.020, RSMo.

48 7. The highway patrol shall examine whether protocols can be developed to allow a
49 provider to request a statewide fingerprint criminal records review check through local law
50 enforcement agencies.

51 8. A provider may use a private investigatory agency rather than the highway patrol to
52 do a criminal history records review check, and alternatively, the applicant pays the private

53 investigatory agency such fees as the provider and such agency shall agree.

54 9. The department of social services shall promulgate rules and regulations to waive the
55 hiring restrictions pursuant to this section for good cause. For purposes of this section, "good
56 cause" means the department has made a determination by examining the employee's prior work
57 history and other relevant factors that such employee does not present a risk to the health or
58 safety of residents.